IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21824 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVNIRMAN COOPERATIVE BANK LIMITED - Petitioner(s)
Versus
DEVIKRUPA EXTRUSION PRIVATE LIMITED & 9 - Respondent(s)

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Appearance :
MR UTKARSH B JANI for Petitioner(s) : 1,
MR MEHUL S SHAH for Respondent(s) : 1 - 3, 8,
MR SURESH M SHAH for Respondent(s) : 1 - 3, 8,
NOTICE SERVED BY DS for Respondent(s) : 4 - 7.
MR MEHUL SHARAD SHAH for Respondent(s) : 5, 6 - 7.
MR SANDEEP N BHATT for Respondent(s) : 9,
MR NEHAL R JOSHI for Respondent(s) : 10,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 19/12/2007

ORAL JUDGMENT

1. This petition primarily challenges order dated 20.07.2007 made by the Tribunal whereby various applications / pursis being Exhibits 28, 33, 40/1, 42/1, 47 and 51 in Appeal No.589 of 2006 and Appeal No.590 of 2006 came to be disposed of with certain directions. After hearing the parties in light of the view that the Court is inclined to adopt, the petition is taken up for final hearing and disposal today.

2. RULE. The learned advocates appearing for respective respondents are directed to waive service.

3. The case of the petitioner-Bank is that certain financial facilities were accorded to Devikrupa Extrusion Pvt. Ltd., who is respondent No.1, wherein respondent Nos. 2 to 8 are/were Directors as well as some of them were Guarantors. That respondent No.9, Gujarat State Financial

Corporation (GSFC), is also a secured creditor having first charge over the properties while the petitioner-Bank is entitled to effect recovery on the basis of award made in favour of the petitioner-Bank. That during pendency of the appeal vide pursis Exh.28, the petitioner-Bank on one hand and respondent Nos. 1 to 4 and 8 on the other hand moved the Tribunal wherein certain arrangement worked out between the parties was sought to be implemented. One of the terms of the said agreement was in relation to purchase of certain properties of respondent No.1-Company by respondent No.10-Company at a consideration of Rs.95 Lacs. It appears there was further agreement that Rs.11 Lacs would also be paid to respondent No.9,GSFC.

4. The grievance of the petitioner is to the effect that prior thereto respondent Nos. 1 to 4 and 8 had been put in possession of the properties by way of an interim order whereunder the said respondents were to run the factory and make periodical payments out of the sale proceeds but after having made payment of about seven installments, the said

respondents stopped making payment and hence, pursis Exh.28 was tendered while keeping the right to effect recovery intact. Though, initially the pursis referred to effecting of recovery from respondents other than the respondents, who were party to the agreement, by virtue of application Exh.54 the record was set-right and it was clarified that the right of the Bank was to effect recovery qua all the respondents.

5. It appears that in the meantime by virtue of application Exh.42/1 respondent-Bank sought to partially resile from the terms of the agreement. At this stage respondent Nos.5, 6 and 7 moved application Exh.44 seeking their discharge on the ground that the said respondents had ceased to be the Directors and hence, were not liable at all; and secondly, that if the other parties to the litigation, namely, the petitioner-Bank and respondent Nos. 1 to 4 and 8 had agreed to sell the properties to respondent No.10, they would be discharged from their liabilities as the respondent-

Bank was taking the said action without consent of respondent Nos. 5, 6 and 7.

6. After hearing the parties the Tribunal has passed an order, which if one may term it to be so, is neither here nor there, and without recording any opinion as to the objections raised by the respondent Nos. 5, 6 and 7. The objections raised by respondent Nos. 5, 6 and 7 were directly linked with execution of the agreement or pursis Exh.28 read with Exh.42/1 moved by the petitioner-Bank and the Tribunal was expected to decide the said issue, namely, whether respondent Nos. 5, 6 and 7 were rightly contending that they should be discharged on the grounds pleaded. Unfortunately, the Tribunal while permitting the parties, in fact, to abide by the terms of Exh.28 modified the said terms without any basis by incorporating condition to the effect that within a period of 15 days from the date of the order, the petitioner-Bank and/or respondent Nos. 5, 6 and 7 should bring a buyer who would offer more than Rs. 95 Lacs and in the event of petitioner-Bank and respondent Nos.5, 6, and 7 failing to bring such a

buyer, the transaction with respondent No.10-Company should be put through at the price agreed upon.

7. Thus, it is apparent that the Tribunal has misdirected itself in law by imposing condition on the objectors, namely, the petitioner-Bank and respondent Nos. 5, 6 and 7, because it was never their case that either one of them had been approached by any intending buyer who was ready and willing to offer higher price. The case of the petitioner-Bank and respondent Nos. 5, 6 and 7 was simplicitor only this much, that the property in question is likely to fetch a higher value if put to hammer and hence, the petitioner-Bank must be permitted to conduct a public auction. The Tribunal could have either accepted the stand of respondent Nos. 1 to 4 and 8 that once an agreement had been entered into and a pursis is filed the parties be directed to comply with the terms of the agreement without any modification, as there were no circumstances warranting any modification of the terms of the agreement; or, the Tribunal could have rejected the said stand and accepted the stand of the

petitioner-Bank as well as respondent Nos.5, 6, and 7 that considering the nature of the property the transaction in question pegged at a price of Rs.95 Lacs did not reflect market value of the properties and the properties were required to be sold by a public auction. The Tribunal could also have rejected outright the application moved by petitioner-Bank, Exh.42/1 and also the application moved by respondent Nos. 5, 6 and 7 Exh.44. But, in no view of the matter, the Tribunal could have, without deciding upon the objections raised by respondent Nos.5, 6 and 7, modified the terms of the agreement by superimposing extraneous conditions. A quasi judicial authority can at the best direct the parties to abide by the terms of the agreement entered into by the parties but cannot on its own modify the terms of the agreement unless and until agreed upon by the parties. It is never open to any Court or any Authority for that matter to rewrite the terms of the Contract unless and until the parties to the contract come-forth and jointly make that proposal.

8. In the aforesaid circumstances, the impugned order dated 20.07.2007 made by the Tribunal is quashed and set aside and the Tribunal is directed to decide afresh all the exhibits / applications, which now stand restored to its file, namely, Exhibits 28, 33, 40/1, 42/1, 47 and 51 as well as Exh.44 in Appeal Nos.589 of 2006 and 590 of 2006.

9. During course of hearing various submissions were made by the learned advocates for the respective parties as to the possession of the properties in question. It is an admitted position that pursuant to earlier arrangement agreed upon between the parties and permitted by the Tribunal, respondent Nos. 1 to 4 and 8 were put in possession of the properties for running the factory on job work basis and making periodical payment to the petitioner - Bank in consideration of being permitted to run the factory. Considering the fact that the said arrangement is no longer functional, in as much as, respondent Nos. 1 to 4 and 8 have not been making any payment, by way of interim arrangement, subject to respective rights of the parties, respondent Nos. 1 to 4 and 8 are

directed to handover the possession of the properties to the petitioner-Bank on or before 31st December, 2007 as per statement made by learned advocate for respondent No.1 to 4 and 8, under instructions.

10. The Tribunal shall therefore decide the aforesaid issues in the pending appeal at the earliest considering the fact that the properties are likely to depreciate and deteriorate with passage of time. The learned advocates for the parties state that the parties shall move an appropriate application before the Tribunal for expeditious hearing and disposal of the matter. Needless to state that upon such an application being moved by any one of the parties, the Tribunal shall endeavor to complete the proceedings as expeditiously as possible.

11. The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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